

REGULATION PROPOSED CHANGES NOTES

Initial 45-day comment period changes are denoted by the following:

Blue Underline – Additions to the current regulations

~~Red Strikeout~~ – Deletions to the current regulations

Changes for the second comment period are denoted by the following:

Purple Double Underline – Additions to the initial proposal

~~Green Double Strikeout~~ – Deletions to the initial proposal

Changes for the third comment period are denoted by the following:

Orange Double Underline Italics – additions to the second comment period text

~~Brown Double Strikeout Italics~~ – deletions to the second comment period text

Note: Text changes are more visible when documents are printed in color.

TITLE 27. ENVIRONMENTAL PROTECTION
DIVISION 2. SOLID WASTE
SUBDIVISION 1. CONSOLIDATED REGULATIONS FOR TREATMENT, STORAGE, PROCESSING OR DISPOSAL OF SOLID WASTE
CHAPTER 3. CRITERIA FOR ALL WASTE MANAGEMENT UNITS, FACILITIES, AND DISPOSAL SITES
SUBCHAPTER 5. CLOSURE AND POST-CLOSURE MAINTENANCE
ARTICLE 2. CLOSURE AND POST-CLOSURE MAINTENANCE STANDARDS FOR DISPOSAL SITES AND LANDFILLS

§ 21200. CIWMB - Change of Ownership During Closure or Postclosure Maintenance.
~~(T14: Section 17792)~~

(a) An owner or operator of a disposal site who plans to sell, transfer or convey the ownership or operation of the disposal site to a new owner or operator shall notify ~~the~~ EA and CIWMB 45 days prior to the anticipated transfer of title. This notification shall include the name(s), address(es) and phone number(s) of the new owner or operator.

(b) The new owner or operator shall ~~provide~~ submit the following to ~~the~~ EA and CIWMB as part of the notification under ¶(a):

(1) Documentation of the financial assurance demonstrations of the new owner or operator, in compliance with the requirements of Articles 2 and 4 of Subchapter 2, Chapter 6 of this Title; and

(2) An affidavit from the new owner or operator stating that the new owner or operator has read the governing SWFP (if applicable), closure plan, and postclosure maintenance plan and will comply with all terms and conditions in the SWFP (if applicable), closure plan, and postclosure maintenance plan, and that all new information submitted is correct.

(c) The EA shall review the submitted information to determine if the new owner or operator has provided ~~all the~~ required information ~~and if the new owner or operator will be able~~ to comply with the terms and conditions of the SWFP (if applicable), closure plan, and the postclosure maintenance plan. The EA shall also obtain written confirmation from CIWMB that the new owner or operator has complied with the financial assurance requirements of Articles 2 and 4, Subchapter 2, Chapter 6.

(1) If the EA determines that the new owner or operator has complied with all requirements, the EA shall send written notification to the ~~prior owner~~ ~~or~~ ~~and~~ ~~operator~~, ~~new owner~~ ~~or~~ ~~and~~ ~~operator~~, RWQCB, and CIWMB within 30 days of receipt of the notification of transfer of title. Within 15 days thereafter, the EA shall send the owner ~~or~~ ~~and~~ operator a copy of a changed SWFP, if applicable.

(2) If the EA determines that the new owner or operator has not complied with all requirements, the EA shall send written notification of this determination to the prior owner ~~or~~ and operator, new owner ~~or~~ and operator, RWQCB, and CIWMB within 30 days of receipt of the notification of transfer of title. The EA shall include the basis for this determination of inadequacy.

~~(a) Before the title to a disposal site is transferred to another person during closure or postclosure maintenance, the new owner shall be notified by the previous owner or his agent of the existence of these standards and of the conditions and agreements assigned to assure compliance.~~

~~(b) The previous owner shall notify the EA of the change in title within thirty (30) days and shall provide the name, firm, mailing address, and telephone number of the new owner.~~

Note: Authority cited: Sections 40502 and 43020, Public Resources Code; ~~and Section 66796.22(d), Government Code.~~
Reference: Sections 43021, 43103 and 44005, Public Resources Code; ~~and Section 66796.22(d), Government Code.~~

CHAPTER 4. DOCUMENTATION AND REPORTING FOR REGULATORY TIERS, PERMITS, WDRS, AND PLANS
SUBCHAPTER 3. DEVELOPMENT OF WASTE DISCHARGE REQUIREMENTS (WDRS) AND SOLID WASTE FACILITY PERMITS
ARTICLE 2. CIWMB - APPLICANT REQUIREMENTS

§ 21570. CIWMB--Filing Requirements. ~~(T14:§18201)~~

(a) Any operator of a disposal site who is required to have a full solid waste facilities permit and waste discharge requirements pursuant to Public Resources Code, Division 31 and §20080(f) shall submit an application package for a solid waste facilities permit in duplicate to the EA pursuant to ¶(f). The applicant shall also simultaneously submit one copy of the application form and the Joint Technical Document (JTD) to the Regional Water Quality Control Board (RWQCB) and one copy of the application form to the director of the local agency that oversees local land use planning for the jurisdiction in which the site is located. The applicant shall ensure demonstration of financial assurances to the CIWMB pursuant to Chapter 6 of this Subdivision.

(b) All other applicants who are required to have a full solid waste facilities permit shall submit an application package for a solid waste facilities permit in duplicate to the EA pursuant to ¶(f) and one copy of the application form to the director of the local agency that oversees local land use planning for the jurisdiction in which the site is located. The applicant shall also simultaneously submit one copy of the application form to the RWQCB.

(c) Any application package submitted to the EA shall be accompanied by the fee specified by the EA pursuant to Public Resources Code §44006(c).

(d) The application package shall require that information be supplied in adequate detail to permit thorough evaluation of the environmental effects of the facility and to permit estimation of the likelihood that the facility will be able to conform to the standards over the useful economic life of the facility. The application package shall require, among other things, that the applicant and the owner give the address at which process may be served upon them.

(e) All information in the application package shall be certified by the applicant and the owner of the site as being true and accurate to the best knowledge and belief of each. The applicant, owner of the facility, or both, shall supply additional information as deemed necessary by the EA.

(f) A complete and correct application package shall include, but not necessarily be limited to, the following items:

(1) Application For Solid Waste Facilities Permit/Waste Discharge Requirements Form (CIWMB E-1-77, Version 8-04, Appendix 1); and

(2) Complete and correct Report of Facility Information. In the case of disposal sites, this will be a Report of Disposal Site Information (RDSI) in the format of a JTD or a Disposal Site Facility Plan or Disposal Facility Report in the format of a JTD; and

(3) California Environmental Quality Act (CEQA) compliance information as follows:

(A) Evidence that there has been compliance with the CEQA, Division 13 (commencing with §21000) of the Public Resources Code, regarding the facility; or

(B) Information on the status of the application's compliance with the CEQA regarding the facility, including the proposed project description. Once there has been compliance with the CEQA regarding the facility, evidence of compliance shall be submitted to the EA; and

(4) Any CEQA Mitigation Monitoring Implementation Schedule; and

(5) Conformance finding information, including one of the following:

(A) Until a countywide or regional agency integrated waste management plan has been approved by the CIWMB, the application shall include statements that: the facility is identified and described in or conforms with the County Solid Waste Management Plan, or otherwise complies with Public Resources Code §50000; and that the facility is consistent with the city or county General Plan and compatible with surrounding land use, in accordance with Public Resources Code §50000.5; or

(B) After a countywide or regional agency integrated waste management plan has been approved by the CIWMB, the application shall include a statement that: the facility is identified in either the countywide siting element, the nondisposal facility element, or in the Source Reduction and Recycling Element for the jurisdiction in which it is located; or, that the facility is not required to be identified in any of these elements pursuant to Public Resources Code §50001; and

(6) For disposal sites, completeness determination of Preliminary or Final Closure/Postclosure Maintenance Plan as specified in §§21780, 21865, and 21890 (Subchapter 4 of this Chapter); and

[Note: The operator has the option of submitting the preliminary closure plan with the JTD, in which case the EA, RWQCB, and CIWMB would review it at the same time. If deemed complete by the reviewing agencies, the solid waste facilities permit application package could then be accepted for filing if all other information in the JTD is accepted by the EA. Or the operator can submit a stand alone preliminary closure plan to be deemed complete by reviewing agencies before the application package is submitted to the EA. For CIWMB purposes, all final

closure/postclosure plans are stand alone documents but can be processed jointly with a proposed solid waste facilities permit revision as long as the final plan is determined complete prior to approval of the proposed solid waste facilities permit. The JTD Index prepared for the EA should show where each closure requirement is addressed in the closure/post-closure plan.]

(7) For disposal sites, a copy of the most recently submitted detailed written estimate or latest approved estimate, whichever identifies the greatest cost, to cover the cost of known or reasonably foreseeable corrective action activities, pursuant to §22101 ~~22221(a)(1)~~;

(78) For disposal sites, current documentation of acceptable funding levels for required closure, postclosure maintenance, and corrective action Financial Assurance Mechanisms (in accordance with Chapter 6, Division 2); and

(89) For disposal sites, current documentation of compliance with operating liability requirements in accordance with Chapter 6;

(910) For disposal sites permitted for more than 20 tons-per-day, a ground or aerial survey to be completed at least once every five years or more frequently as determined by the EA. For disposal sites permitted for 20 tons-per-day or less, a ground aerial survey must be completed at least once every ten years. Survey results must be submitted as a CADD or vector graphics data file including at least two strata, i.e., 1) a stratum showing the base and finished ground surfaces, and 2) a stratum showing the existing and finished ground surfaces. For disposal sites where a change in permitted volume is proposed, a third stratum showing the base and proposed finished ground surface must be included. For each stratum the following information shall be included: site name, stratum name, surface1 name, surface2 name, volume calculation method (grid, composite, section), expansion (cut) factor, compaction (fill) factor, cut volume, fill volume and net volume. All volumes shall be reported in cubic yards. If the base ground surface is uncertain, the operator is allowed to provide the best available information as a substitute for the actual as-built contours. If selecting this substitute method, the operator must provide an explanation of the basis for using the substitute base ground surface. For the purposes of this section the following definitions apply:

(A) "base ground surface" - the best available excavation plan surface that existed prior to the placement of any waste;

(B) "CADD" - computer aided design and drafting;

(C) "compaction (fill) factor" - the factor used to correct for expected compaction of fill material; this factor should normally be unity (one); if the factor is not unity (one), an explanation must be provided for the basis of the volumetric correction;

(D) "cut volume" - for any stratum, the volume removed by a cut of a lower surface to achieve the upper surface;

(E) "existing ground surface" - the topography that exists at the time of the subject survey;

(F) "expansion (cut) factor" - the factor used to correct for expected expansion of a cut surface; this factor should normally be unity (one); if the factor is not unity (one), an explanation must be provided for the basis of the volumetric correction;

- 1 (G) "fill volume" - for any stratum, the volume bound between the upper and lower surfaces;
- 2 (H) "finished ground surface" - the final fill plan surface as shown in the approved closure plan
3 for the disposal site;
- 4 (I) "net volume" - the fill volume less the cut volume;
- 5 (J) "site name" - the name of the disposal site for which the survey information is being
6 submitted;
- 7 (K) "stratum (plural: strata)" - a particular volume of a solid waste landfill bound by specified
8 upper and lower surfaces;
- 9 (L) "stratum name" - a descriptive name for the stratum for which volumetric information is
10 being submitted, e.g., total volume including proposed expansion;
- 11 (M) "surface names" - names for the pair of surfaces that define a named stratum, e.g., base
12 ground surface and proposed finished ground surface;
- 13 (N) "survey" - a comprehensive examination of the disposal site under the direction of registered
14 civil engineer or licensed land surveyor for purposes of determining the topography of the base,
15 existing and finished ground surfaces, and the volumes bound by those surfaces;
- 16 (O) "vector graphics" - computer generated images comprised of lines and shapes of given
17 origin, direction, thickness, color and other attributes;
- 18 (P) "volume calculation method" - grid, composite, section or other method approved by the
19 enforcement agency.
- 20 (~~10~~11) For disposal sites, one of the following:
- 21 (A)(i) In-place density (pounds of waste per cubic yard of waste). The in-place density is the
22 estimated or measured density of in-place waste material achieved by mechanical or other means
23 in the development of the current lift of the current operating waste cell, and
- 24 (ii) Waste-to-cover ratio, estimated, (volume:volume). The waste-to-cover ratio estimate is a
25 unit-less expression of the proportion of the volumes of waste and cover that comprise a volume
26 of compacted fill material, e.g. 4:1. The cover portion of the waste-to-cover ratio estimate should
27 include only soil or approved daily or intermediate alternative cover that is not considered a
28 waste material, i.e., payment of fees to the CIWMB is not required. The waste portion of the
29 waste-to-cover ratio estimate should include only waste material for which payment of fees to
30 the CIWMB is reported, or
- 31 (B) Airspace utilization factor (tons of waste per cubic yard of landfill airspace). The airspace
32 utilization factor (AUF) is the effective density of waste material in the landfill. The AUF is
33 recorded as the total weight of waste material passing over the landfill scales that is placed in a
34 known volume of landfill airspace in a given period of time. The waste portion of the AUF
35 should include only waste material for which payment of fees to the CIWMB is reported.

(12) List of all public hearings and other meetings open to the public that have been held or copies of notices distributed that are applicable to the proposed solid waste facilities permit action.

Note: Authority cited: Sections 40002, 40502 and 43020, Public Resources Code.
Reference: Sections 43103, 44001-44017, 44100-44101, 44300-44301, 44500-44503, and 44813-44816, Public Resources Code.

§ 21640. CIWMB--Review of Permits. (~~T14:§18213~~)

(a) Except as provided in §21680, all full SWFPs shall be reviewed and, if necessary, revised, from the date of last issuance at least once every five years.

(b) No less than 150 days before the permit is due for review, the operator shall submit an application for permit review. The application shall be made in the manner specified in §§21570 and 21590 and shall contain the following:

(1) Identify the proposed changes in design and operation; and

(2) Updated amendments to the Report of Facility Information (RFI);

(3) For disposal sites only, the updated amendments shall include an estimate of the remaining site life and capacity;

(4) For disposal sites only, an amended closure plan as specified in §§21780, 21865, and 21890.

(5) For disposal sites, a copy of the most recently submitted detailed written estimate or latest approved estimate, whichever identifies the greatest cost, to cover the cost of known or reasonably foreseeable corrective action activities, pursuant to §22101 ~~22221(a)(1)~~;

Note: Authority Cited: Sections 40502 and 43020, Public Resources Code.
Reference: Section 43103 and 44015, Public Resources Code.

Article 3.1. CIWMB - CIWMB Requirements

§ 21685. CIWMB - Proposed Solid Waste Facilities Permit; CIWMB Processing Requirements. (~~T14:§18207, §17608~~)

(a) The CIWMB shall stamp the proposed solid waste facilities permit with the date of receipt at the time the envelope is opened. The CIWMB shall consider each proposed solid waste facilities permit, any public testimony, and comments. Written comments may be submitted to the CIWMB and will become part of the CIWMB record. Such written comments shall be made available to the EA.

(b) The CIWMB shall not concur in issuance of the proposed solid waste facilities permit for new and revised solid waste facilities permits, and the Executive Director of the CIWMB for modified solid waste facilities permits, if the following information, if applicable, has not been submitted to the EA and the CIWMB pursuant to Public Resources Code §44009:

(1) Complete and correct Report of Facility Information as certified by the EA,

- (2) EA's Solid Waste Facilities Permit Review Report pursuant to §21675,
- (3) EA's proposed solid waste facilities permit written pursuant to this Subchapter.
- (4)(A) Information that the facility is identified and described in or conforms with the County Solid Waste Management Plan (Public Resources Code §50000); and that the facility is consistent with the city or county General Plan and compatible with surrounding land use, in accordance with Public Resources Code §50000.5; or
- (B) After a countywide or regional agency integrated waste management plan has been approved by the CIWMB, the EA's finding that the facility has met the requirements of Public Resources Code §50001.
- (5) Documentation sufficient for the CIWMB to deem that a Preliminary or Final Closure/Postclosure Maintenance Plan is consistent with closure and postclosure maintenance state minimum standards (including, but not limited to, Chapters 3 and 4) for those portions of the plan subject to CIWMB jurisdiction, if applicable;
- (i) For closure plans submitted as part of a JTD, the determination whether the plans are consistent with state minimum standards shall be made within 60 days of the plans being considered complete pursuant to §21860(c).
- (ii) This preliminary determination shall constitute the staff recommendation for the Board consideration of concurrence with a solid waste facilities permit unless the application package, of which the JTD was a part, is amended or modified.
- (iii) This determination is solely for the Board consideration of concurrence with a solid waste facilities permit and does not constitute any final determination for the closure plans review process pursuant to §21860.
- (6) For disposal sites, a copy of the most recently submitted detailed written estimate or latest approved estimate, whichever identifies the greatest cost, to cover the cost of known or reasonably foreseeable corrective action activities, pursuant to §22101.22221(a)(1);
- ~~(67)~~(A) Current documentation of acceptable funding levels for required closure, postclosure maintenance, and corrective action Financial Assurances Documentation in accordance with Chapter 6, if applicable; and
- (B) Current documentation of compliance with Operating Liability Requirements, if applicable (Chapter 6).
- ~~(78)~~ The CIWMB shall ensure the facility is operating consistent with State Minimum Standards, pursuant to Subchapter 4 of Chapter 3 of this subdivision or applicable minimum standards in Title 14 (§17200 et seq.),
- ~~(89)~~ The EA finding that existing CEQA documentation is consistent with and supports the proposed solid waste facilities permit and RFI or supporting information indicating the EA has found that approval of the proposed solid waste facilities permit would not lead to any adverse environmental impacts and is exempt from the requirements of CEQA.

(c) The CIWMB, with respect to new and revised solid waste facilities permits, and the Executive Director of the CIWMB, with respect to modified solid waste facilities permits, shall either concur or object to the issuance of the proposed solid waste facilities permit within sixty days of receipt, except as authorized by Public Resources Code §44009, or by operator's consent. If the CIWMB or Executive Director objects to a proposed solid waste facilities permit, it shall accompany its objection with an explanation of its action, which may suggest conditions or other amendments that may render the proposed solid waste facilities permit unobjectionable; however, such suggestions do not constitute approval of the proposed permit subject to incorporation of the suggestions. The Executive Director shall report to the CIWMB on his or her concurrence or denial of modified permits at its next regularly scheduled meeting or via a memo, and post this information on the CIWMB's web site or agenda.

(d) For the purposes of CIWMB's determination to concur in or to object to a proposed permit pursuant to ¶(c) above, a facility that has landfill decomposition gases exceeding the compliance levels in §§20919.5 or 20921, or at which a hazard or nuisance may exist pursuant to §20919, shall be considered to be consistent with State Minimum Standards specified in §§20919, 20919.5, and 20921 for purposes of ¶(b)(8) of this section if all of the following requirements have been satisfied with respect to the facility (for the purpose of this subsection, "facility" includes "disposal site"):

(1) The operator shall have delivered all notices to the EA and owner as required by §§20919, 20919.5, and 20937 as applicable.

(A) The site-specific compliance level applicable to the facility shall be lesser of that specified in (i) the facility's JTD/RFI, closure and postclosure maintenance plans, or the permit for the facility, or (ii) shall be the levels specified in §§20919.5 or 20921, as applicable.

(B) The facility's compliance boundary for landfill decomposition gas migration shall be the permitted facility boundary or other alternate boundary within the permitted facility boundary approved by the EA.

(2) The EA shall have forwarded to the CIWMB all notifications received pursuant to ¶(d)(1) above.

(3) Landfill gas monitoring has been and is being conducted at least monthly, at a minimum, after notice to the EA and shall continue until the operator has complied with the enforcement order issued pursuant to ¶(d)(6) below.

(4) The EA has determined that landfill gas decomposition gas generated by the facility does not constitute an imminent and substantial threat to public health and safety or the environment.

(A) For purposes of this section, an imminent and substantial threat to public health and safety or the environment is defined as a condition which is creating a substantial probability of harm, when the probability and potential extent of harm make it reasonably necessary to take immediate action to prevent, reduce, or mitigate the harm to persons, property, natural resources, or the public health or safety.

- 1 (5) The EA has determined that to come into compliance with §§20919, 20919.5, and 20921 it
2 will take the operator longer than 90 days due to the time it takes to plan and implement
3 appropriate corrective measures.
- 4 (6) The facility is operating under an enforcement order issued to the operator and which meets
5 all of the following requirements:
 - 6 (A) The order was issued pursuant to 14 CCR §18304.1(a)(3) and includes a compliance
7 schedule for bringing the facility into compliance with §§20919, 20919.5, and 20921.
 - 8 (B) A final order has been issued pursuant to 14 CCR §18304.2.
 - 9 (C) A copy of the proposed order and any amended order proposed by the EA was provided to
10 the CIWMB for review and comment prior to its issuance.
- 11 (7) The EA has reviewed and approved and the CIWMB has reviewed all investigation reports or
12 results, proposed workplans, or proposed gas mitigation measures submitted pursuant to the
13 enforcement order issued pursuant to ¶(d)(6).
 - 14 (A) If possible, all parties shall mutually agree to time frames for EA and CIWMB review of the
15 submitted documents so that all reviews can be completed expeditiously. In the event agreement
16 cannot be reached, the EA and CIWMB shall determine the schedules for their review.
- 17 (8) The operator is in compliance with the approved gas mitigation measures or workplan
18 approved by the EA and specified in the enforcement order.
 - 19 (A) If the operator fails to comply with the enforcement order, the EA shall, as necessary and
20 appropriate:
 - 21 (i) Take additional enforcement action, which may include the imposition of administrative civil
22 penalties in an amount from one hundred dollars (\$100) up to five thousand dollars (\$5,000) for
23 each day on which a violation occurs pursuant to §45011 of the Public Resources Code, or
 - 24 (ii) Take direct cleanup action pursuant to an appropriate enforcement order.
 - 25 (B) If the EA fails to take appropriate enforcement action as specified in 14 CCR §18084(d),
26 CIWMB may take enforcement action pursuant to 14 CCR §18350.
 - 27 (C) If the CIWMB takes enforcement action in lieu of the EA, any required public hearing shall
28 be conducted by the CIWMB Executive Director or his/her designee.
- 29 (9) For facilities that propose a facility property boundary expansion, a footprint expansion, or
30 any other increase in facility capacity as part of the permit application, investigations or analyses
31 respecting landfill decomposition gases at the facility must have been conducted by the operator
32 prior to the submittal of the permit application to the EA and the results of such investigations
33 and analyses shall be submitted to the EA, CIWMB, RWQCB, APCD/AQMD, and any other
34 appropriate agency prior to or concurrent with the permit application:
 - 35 (A) The investigations or analyses shall evaluate:

- (i) Whether the proposed expansion may increase the magnitude or complexity of the noncompliance with §§20919, 20919.5, and 20921.
- (ii) Whether the proposed expansion may cause potential impacts to water quality and air quality or other impacts outside the jurisdiction of the EA.
- (B) If the results of the investigations and analyses conducted pursuant to ¶(d)(9)(A)(i) warrant, the operator shall include an analysis and additional feasible control measures as part of the gas mitigation measures or workplan specified in the order required by ¶(d)(6)
- (e) If an applicant or enforcement agency requests that revisions, additions or amendments be considered, these will be considered in accordance with the conditions specified in §21580 and ¶(f) of §21650 respectively.

Note: Authority Cited: Sections 40502 and 43020, Public Resources Code.
Reference: Section 43103, 44007 - 44010 and 44014, Public Resources Code.

CHAPTER 4. DOCUMENTATION AND REPORTING FOR REGULATORY TIERS, PERMITS, WDRS, AND PLANS
SUBCHAPTER 4. DEVELOPMENT OF CLOSURE/POSTCLOSURE MAINTENANCE PLANS

§ 21820. CIWMB -Closure Cost Estimates.

(a) The operator shall provide a written cost estimate, in current dollars, of the cost of hiring a third party to close the landfill in accordance with the submitted closure plan. Cost estimates shall meet the following criteria:

(1) Cost estimates shall equal the cost of closing the landfill at the point in its active life when the extent and manner of operation would make closure the most expensive, as indicated by the closure plan.

(A) When closing discrete units in phases, according to the requirements of partial closure, the estimate may account for closing only the maximum area or unit of a landfill open at any time, or

(B) If not closing discrete units in phases pursuant to ¶(a)(1)(A), the estimate shall account for the entire permitted landfill except for those areas certified closed by the CIWMB, RWQCB, and EA pursuant to §21880;

(2) Cost estimates shall include the cost of activities necessary to close the site pursuant to ¶(b). ~~Cost estimates shall be developed for the activities anticipated for scheduled closure. The~~ Closure cost estimates shall always be high enough to ensure that, if, at any time, the landfill had to begin to close, the cost of activities for closure would not exceed the cost estimate. To reflect the potential for premature closure, each cost estimate shall include all activities required for closure yet to be completed at the time of preparation of the estimate;

1 (3) Cost estimates shall include or reflect the design, materials, equipment, labor, administration
2 and quality assurance necessary for closure;
3

4 (4) The total closure cost estimate shall be increased by a factor of 20% to account for cost over-
5 runs due to unforeseen circumstances, such as adverse weather conditions and inadequate site
6 characterization, which would result in increased closure costs. The operator may apply to the
7 CIWMB for, and the CIWMB may approve, a contingency percentage of less than 20% at the
8 time that the final closure plan is approved, provided that the CIWMB finds that a lesser
9 percentage will provide acceptable coverage of potential cost overruns;
10

11 (5) The operator shall increase the closure cost estimate when changes to the plan or at the
12 landfill increase the cost of closure; and
13

14 (6) The operator may reduce the closure cost estimate when changes to the plan or at the landfill
15 decrease the costs of closure. The request for reduction shall be submitted to the CIWMB for
16 approval.
17

18 (b) Closure cost estimates shall include, but are not limited to, the following information:
19

20 (1) If the documents are preliminary closure and postclosure maintenance plans, an estimate of
21 the cost of developing final closure and postclosure maintenance plans;
22

23 (2) an estimate of the cost to prepare plans and specifications, bidding documents, and other
24 construction related documents; and
25

26 (3) an estimate of the cost of closure activities including schedules for implementation activities.
27 The activities described shall include, but are not limited to, an estimate of the cost:
28

29 (A) to install or upgrade site security;
30

31 (B) for structure removal;
32

33 (C) to install or upgrade the monitoring and control systems, including landfill gas, leachate, and
34 ground water systems if one or more of these systems is required by CIWMB, RWQCB, or EA.
35

36 (D) to install the final cover; and
37

38 (E) to install or upgrade drainage and erosion control systems.
39

40 Note: Authority cited: Section 40502, Public Resources Code.
41 Reference: Sections 43020, 43021 and 43103, Public Resources Code.
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43

44 **§ 21840. CIWMB -Postclosure Maintenance Cost Estimates.**
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(a) The operator shall provide a written estimate, in current dollars, of the cost of hiring a third party to maintain, monitor, and inspect the closed landfill in accordance with the postclosure maintenance plan requirements. Cost estimates shall be subject to the following requirements:

(1) Cost estimates shall be based on the activities described in the postclosure maintenance plan and account for postclosure maintenance of the entire landfill;

(A) Cost estimates shall be based on the current monitoring and maintenance requirements. Cost estimates shall not anticipate future reductions in maintenance and/or monitoring.

(2) Cost estimates shall be of sufficient detail to identify the maintenance costs, repair costs, and replacement costs throughout the postclosure maintenance of the landfill;

(3) The cost estimate ~~used to demonstrate financial assurance~~, shall be the annualized cost of maintenance and monitoring ~~anticipated~~ during the postclosure period as delineated in the postclosure maintenance plan, ~~multiplied by thirty (30)~~; and

(A) Cost estimates for those maintenance and monitoring activities which occur less frequently than annually shall be prorated to an annual cost. The expected recurrence period shall be specified in the postclosure maintenance plan; and

(i) Cost estimates for those maintenance and monitoring activities which occur less frequently than every 30 years shall be calculated as occurring every 30 years;

(4) The operator shall modify the postclosure cost estimate, in accordance with §21865 of this Subchapter, when changes in the plan or landfill conditions indicate an increase or decrease in postclosure maintenance costs. Requests for modifications shall be submitted to the CIWMB for approval.

(b) Postclosure maintenance plans shall include a detailed estimate of the annual costs for postclosure monitoring and maintenance, including the following:

(1) site security pursuant to §21135;

(2) maintenance and integrity of the final cover including material acquisition, labor, and placement for repair of the final cover as required due to the effects of settlement, slope failure, or erosion;

(3) maintenance of vegetation including fertilization, irrigation and irrigation system maintenance;

(4) monitoring, operation and maintenance of the environmental monitoring and control systems, including, but not limited to, the landfill gas, leachate, and ground water systems;

(5) maintenance of the drainage and erosion control systems including clearing materials blocking drainage conveyances and repairing drains, levees, dikes and protective berms.

Note: Authority cited: Sections 40502 and 40508, Public Resources Code.
Reference: Sections 40508, 43020, 43021, 43103, 43501 and 43509, Public Resources Code; and Title 40, Code of Federal Regulations, Section 258.72.

§ 21865. CIWMB -Amendment of Closure and Postclosure Maintenance Plans.

(a) Preliminary cClosure and postclosure maintenance plans shall be submitted every time a review or revision of the SWFP is conducted. *If there have been no changes requiring an amendment under the ¶c criteria, a statement certified by a registered civil engineer or certified engineering geologist that there have been no changes may be submitted in lieu of submitting plans.*

(1) For disposal sites without a solid waste facilities permit, the operator shall initially submit updated plans in accordance with the following schedule:

(A) ~~If the a~~Approval of Certification of Closure pursuant to §21880 occurred on or after January 1, 1988 but prior to ~~December 31, 1996~~ January 1, 1997, the operator shall submit updated plans on or before [2 years after effective date of regulations];

(B) ~~If the a~~Approval of Certification of Closure pursuant to §21880 occurred on or after January 1, 1997 but prior to January 1, 2001, the operator shall submit updated plans on or before [3 years after effective date of regulations];

(C) ~~If the a~~Approval of Certification of Closure pursuant to §21880 occurred on or after January 1, 2001 or ~~if the operator~~ has initiated closure activities on or before February 25, 2003, but ~~has~~ not received approval of Certification of Closure pursuant to §21880, the operator shall submit updated plans on or before [4 years after effective date of regulations].

(2) After complying with ¶(1), the operator shall submit updated plans at least once every five years.

~~(b) The plans shall be submitted as part of the JTD or a separate document in the form of a distinct component of a JTD. plans shall be submitted as part of the JTD or a separate document in the form of a distinct component of a JTD. If the preliminary closure and postclosure maintenance plans have been previously approved and a new horizontal or vertical expansion of a solid waste landfill is not proposed, the~~ The form of submittal shall be as amendments to the existing plans as necessary. Submittal shall be in accordance with §21780. The evaluation and approval of the plans ~~amendments~~ shall be as specified under §21860.

~~(b)c~~ The plans shall be amended to reflect the following:

(1) ~~Any~~ change in

(A) ~~operation~~ Operation or solid waste landfill design which would affect the implementation of the closure and/or postclosure maintenance plans;

(2B) ~~A change in~~ The anticipated year of closure;

(3C) ~~Any change in~~ The financial mechanism required pursuant to §22227, "Substitution of Mechanisms" or §22231, "Cancellation or Nonrenewal by a Provider of Financial Assurance"; ~~or~~ and

(42) Updates of the cost estimates shall be based on the current costs on a unit basis (unit costs) for closure and postclosure maintenance. Cost estimate adjustments based only on inflation factors are not acceptable.

~~[Note: The intent of subsection (b) is to assure adequate review of the amended portions of the plans and not to institute a comprehensive review of the portions of the plan not subject to the amendments.]~~

Note: Authority cited: Section 40502, Public Resources Code.
Reference: Section 43103, 43505, and 43509, Public Resources Code.

§ 21880. CIWMB -Certification of Closure. ~~(T14:s18275)~~

(a) The operator shall submit to the CIWMB, the EA, and the RWQCB for approval a certification, under penalty of perjury, that the solid waste landfill has been closed in accordance with the approved final closure plan.

(1) The certification submittal shall also include the as-built costs of closure in the same arrangement and sequence as the estimated costs of closure included in the approved final closure plan.

(b) The certification shall be completed by a registered civil engineer or certified engineering geologist and include a report with supporting documentation. The report shall include a Final Construction Quality Assurance (CQA) report pursuant to ~~Article 2 of Subchapter 1 of Chapter 3~~ (§§20323 and §20324 et seq.) and any other documentation as necessary to support the certification. The certification, Final CQA report and any other documentation as necessary to support the certification shall be incorporated into the approved postclosure maintenance plan.

(c) The certification shall be submitted within 180 days of the completion of closure construction activities unless CIWMB, EA, and RWQCB approve an alternate schedule.

(d) Within 120 days of receipt of the certification, CIWMB, RWQCB, and EA shall complete a detailed review of the submittal and submit their comments to the operator.

(e) If the certification is not approved by the CIWMB, RWQCB, or EA, the operator shall submit a revised certification within 60 days following such determination unless the CIWMB, RWQCB, and EA approve an alternate schedule.

~~(e)~~ Once the certification has been approved by the CIWMB, RWQCB, and the EA, the CIWMB shall release the operator from the financial mechanism for closure. CIWMB shall notify the local planning agency of this determination.

(dg) On the day that the certification of closure is approved, the solid waste landfill shall be considered closed and in postclosure maintenance.

Note: Authority cited: Section 40502, Public Resources Code; ~~and Section 66796.22(d), Government Code.~~
Reference: ~~Section 66796.22(d), Government Code;~~ and Sections 43020, 43021, 43103 and 44006, Public Resources Code.

SUBCHAPTER 5. CIWMB - ~~NON-WATER QUALITY~~ CORRECTIVE ACTION COST ESTIMATE AND PLAN ~~AND FINANCIAL ASSURANCE~~ REQUIREMENTS

§ 22100. CIWMB – Scope and Applicability.

(a) This subchapter applies to owners and operators of all disposal facilities that ~~were or are required to be permitted as solid waste landfills and have been or will be operated~~ operating on or after July 1, 1991.

~~(b) In order to protect public health, safety and the environment, an operator shall demonstrate financial responsibility to CIWMB to conduct activities required as a result of non-water quality corrective actions. These corrective actions include, but are not limited to, final cover replacement, waste disposal outside the permitted disposal area, landfill gas migration, leachate seeps, slope failures, erosion, and/or surface and subsurface fires. The operator shall provide cost estimate(s) and a plan, as appropriate, for initiating and completing known or reasonably foreseeable corrective action pursuant to §22101.~~

~~(c) An operator shall demonstrate this required financial responsibility by submitting one financial assurance demonstration to cover both non-water quality correction actions, as required by §(b), and water quality corrective actions, as required by §22220.~~

(c) For the purposes of this subchapter, the following definitions apply:

(1) “Corrective action” means an activity, including restoring the integrity or establishing the adequacy of a damaged or inadequate containment structure or environmental monitoring or control system, to: bring a landfill into compliance with the applicable requirements, prevent a reasonably foreseeable release, or remediate a known release to the environment. Corrective action does not include routine maintenance.

(2) “Causal event” means an occurrence that could result in a non-water release corrective action. Causal events include, but are not limited to, earthquakes, flooding, tsunamis, seiche, fire, precipitation, and degradation of or otherwise inadequate containment structure or environmental monitoring or control system.

Note: Authority cited: Section 40502, 43020, 43021, 43050, and 43103, Public Resources Code.
Reference: Sections 40052, 43020, 43021, and 43101, Public Resources Code.

§ 22101. CIWMB – ~~Amount of Required Coverage and~~ Corrective Action Cost Estimate Requirements.

(a) Water release corrective action cost estimate

~~Notwithstanding the requirement to demonstrate financial responsibility to conduct non-water quality corrective action activities pursuant to §22100(e), the operator is not required to submit a separate financial assurance demonstration or cost estimate covering these activities. Rather, the amount of the financial assurance demonstration required by §22100(e) shall be equal to the amount of the water quality corrective action estimate prepared pursuant to §22221(a)(1).~~
The operator shall ~~prepare~~ provide a cost estimate for initiating and completing corrective action for all known or reasonably foreseeable releases from the solid waste landfill to water in accordance with the program required by the SWRCB pursuant to §20380(b).

(b) *Non-water release corrective action estimate*

(1) Effective [one year after effective date of regulations], on or before the date of the first permit review or revision or plan review as determined by the schedule in §21865, the operator shall also ~~prepare~~ provide a cost estimate for the complete replacement of the final cover. *The operator shall calculate this cost in one of the following two ways:*

(A) By providing a new estimate of the cost of complete replacement of the final cover, including, but not limited to, the cost of removing the existing cover and preparing for and installing the new cover, as necessary, depending on the replacement final cover system design; or,

~~(2B) In lieu of preparing a separate cost estimate pursuant to ¶(b)(1), the operator may submit~~
By providing the most recently approved or submitted closure cost estimate, whichever is greater, adjusted, as necessary, to reflect closure of the entire solid waste landfill and current unit costs.

~~(e2)~~ The operator, in lieu of ~~preparing~~ providing a separate corrective action cost estimate pursuant to ¶(b)(1)(A) or ~~(2B)~~, may ~~submit~~ provide a site-specific corrective action plan, as described in §22102.

~~(d)~~ A cost estimate prepared pursuant to ¶(a), ~~or~~ ¶(b) ~~or~~ ¶(e) must be a detailed written estimate, in current dollars, of the cost of hiring a third party to perform all *applicable* corrective action activities for the entire corrective action period.

~~(e)~~ The operator shall prepare the cost estimates in accordance with the requirements of §21815.

~~(f)~~ The operator shall increase the cost estimate if changes in the corrective action program, corrective action plan, or landfill conditions increase the maximum cost of corrective action.

~~(g)~~ The operator may only reduce the amount of the cost estimate if the cost estimate exceeds the maximum remaining corrective action costs and the reduction is approved pursuant to ¶(h).

~~(h)~~ (1) The operator shall ~~submit~~ provide a copy of the cost estimate prepared pursuant to §~~¶(a) 22221(a)(1)~~ to ~~CIWMB~~ RWQCB for review and approval and shall ~~submit~~ provide a copy of this estimate ~~each time that the submission of the non-water quality corrective action financial assurance to CIWMB is required.~~

(2) The operator shall ~~submit~~ *provide* the estimate prepared pursuant to ¶(b) ~~or ¶(c)~~ to RWQCB, EA, and CIWMB for review and approval in accordance with the schedule in §21860.

Note: Authority cited: Section 40502, 43020, 43021, 43050, and 43103, Public Resources Code.
Reference: Sections 43020, 43021, and 43101, Public Resources Code.

~~§ 22102. CIWMB—Disbursements from the Corrective Action Financial Assurance Mechanism.~~

~~(a) The CIWMB shall authorize disbursements from a corrective action financial assurance mechanism to the RWQCB for water quality corrective actions pursuant to §22234(c) and shall authorize disbursements for non-water quality corrective actions pursuant to §22234(a), as appropriate.~~

Note: Authority cited: Section 40502, 43020, 43021, 43050, and 43103, Public Resources Code.
Reference: Sections 43020, 43021, and 43101, Public Resources Code.

§ 22102. CIWMB –Corrective Action Plan Requirements.

(a) A corrective action plan submitted to comply with §22101~~(eb)~~(2) must include an evaluation of ~~all the~~ known or reasonably foreseeable non-water release corrective actions *needed as a result of each known or reasonably foreseeable causal event including, but not limited to, partial final cover replacement, landfill gas migration, leachate seeps, slope failures, erosion, surface and subsurface fires, and waste disposal outside the permitted disposal area.*

(b) The corrective action plan must include cost estimates, prepared pursuant to §22101, for all known or reasonably foreseeable corrective actions described in the plan. The cost estimate with the highest amount must be used to determine the amount of financial assurance required pursuant to §22221(b)(2).

(c) The corrective action plan must ~~evaluate~~ *include an evaluation of* the long-term performance of the final cover system *to ensure that it will continue to meet the requirements of §21140 without the need for corrective action.*

(d) The operator shall submit the plan to RWQCB, EA, and CIWMB for review and approval in accordance with the schedule in §21860.

(e) (1) The corrective action plan shall be prepared and certified by a third party who meets all of the following conditions:

(A) Is a ~~4 licensed~~ registered civil engineer or certified engineering geologist ~~shall prepare the corrective action plan.~~

(B) Is not employed by the current entity responsible for the design of the solid waste landfill;

(C) ~~(2) The licensed civil engineer or certified engineering geologist may~~ Is not be the same person who current professional in responsible charge of work for the ~~designed~~ of the solid waste landfill; and

~~(D) and Is not employed by may not be affiliated with an entity or its subsidiary, parent, or other similarly related entity under common control that owns or, owned, operates, operated, constructed, or designed the solid waste landfill.~~

~~(2) For the purposes of ¶(e)(1) (B) and (C), the current entity responsible for the design and the current professional in responsible charge of design work are the entity and registered civil engineer or certified engineering geologist responsible for the design pursuant to §21600(b)(4)(B) in the conditioning JTD/RDSI, including all subsequent RFI amendments as applicable and approved, listed in the most recently issued solid waste facility permit and pursuant to §21780 in the approved final closure plan.~~

§ 22103. CIWMB – Updated Corrective Action Cost Estimate.

~~(a) An The operator shall submit an updated corrective action estimate to CIWMB prepared pursuant to §22101(a) and an updated correction action estimate or corrective action plan prepared pursuant to §22101(b) or (c) each time closure and postclosure maintenance plans are required to be submitted pursuant to §21865 at each SWFP review conducted pursuant to §§21640 and 21675 and each time the SWFP is revised pursuant to §21620. For disposal sites without a SWFP, an operator shall submit an updated corrective action cost estimate at least once every five years.~~

~~(1) The updated cost estimate shall be based on the current unit costs. Cost estimate adjustments based only on inflation factors are not acceptable.~~

Note: Authority cited: Section 40502, 43020, 43021, 43050, and 43103, Public Resources Code.
Reference: Sections 43020, 43021, 43101, 43103, 44004 and 44015, Public Resources Code.

CHAPTER 6. FINANCIAL ASSURANCES AT SOLID WASTE FACILITIES AND AT WASTE MANAGEMENT UNITS FOR SOLID WASTE

SUBCHAPTER 2. FINANCIAL ASSURANCE REQUIREMENTS

ARTICLE 2. FINANCIAL ASSURANCE FOR POSTCLOSURE MAINTENANCE

§ 22211. CIWMB – Amount of Required Coverage ~~(T14:Section 18282)~~

~~(a) Except as otherwise noted in section §22225, t~~The operator of each solid waste landfill shall demonstrate financial responsibility to the CIWMB for postclosure maintenance until released from postclosure maintenance pursuant to §21900. Except as otherwise provided in ¶(b) and §22225, the amount of the financial demonstration must be ~~in~~ at least the amount of the ~~current~~ most recently approved or submitted postclosure maintenance cost estimate, whichever is greater, prepared pursuant to §21840 multiplied by a factor as identified below.

~~(1) For each solid waste landfill without approved final closure and postclosure maintenance plans on or before [effective date of regulations], the postclosure maintenance cost estimate must be calculated with a The multiplier shall be equal to thirty (30) from the time the postclosure maintenance cost estimate is initially prepared and continuing throughout the first year after~~

approval of the certification of closure of the entire solid waste landfill pursuant to §21880, which will initiate the postclosure maintenance period of the closed landfill.

~~(2) At the end of each year of postclosure maintenance from year one through year fifteen (15), the operator may request a reduction in the financial assurance demonstration provided to the CIWMB on a one-for-one basis with the number of years of postclosure maintenance completed. This reduction shall not cause the multiplier to be less than fifteen (15).~~

~~(A) For each solid waste landfill certified closed pursuant to §21880 prior to [effective date of regulations], the operator may request a reduction in the multiplier corresponding to the number of years of postclosure maintenance completed. This reduction in the postclosure maintenance cost estimate multiplier shall not cause the multiplier to be less than fifteen (15).~~

~~(3) After fifteen (15) five (5) years of completed postclosure maintenance activities, at each postclosure maintenance plan review conducted pursuant to §21865, the operator may submit a request to CIWMB for approval to use a reduced multiplier. CIWMB shall approve the use of a reduced multiplier if CIWMB determines all the following criteria have been satisfied:~~

~~(A) The operator may only request for a reduced multiplier shall occur at once every five (5) years intervals, the first request occurring no earlier than the end of the twentieth (20) fifth (5) year of postclosure maintenance.~~

~~(B) The operator request shall be for a reduction in the multiplier in increments of five (5), but in no instance shall the multiplier be reduced below five (5) fifteen (15) until the operator is released from postclosure maintenance pursuant to §21900, and~~

~~(C) During the five (5) year interval, the operator shall meet all of the following conditions:~~

~~1. The operator has not been subject to an enforcement order issued for the closed solid waste landfill by EA, CIWMB, or RWQCB has not issued an enforcement order, including but not limited to, a Notice and Order, Cleanup and Abatement Order, Cease and Desist Order, Time Schedule Order, or similar controlling order within the current Waste Discharge Requirements of the RWQCB or the SWFP against the operator of the closed solid waste landfill, and the CIWMB has not placed the closed solid waste landfill on the Inventory of Facilities Violating State Minimum Standards, except if:~~

~~a. The agency that issued the enforcement order has determined that:~~

~~i. Any required capital improvements have been satisfactorily constructed, and~~

~~ii. The activities required by the enforcement order either:~~

~~I. Are in the operation and maintenance phase, or~~

~~II. Have been satisfactorily completed, and~~

1 iii. The activities required by the enforcement order are effectively remediating the subject(s) of
2 the enforcement order, and

3
4 b. The remaining costs of the activities required by the enforcement order are addressed in the
5 postclosure maintenance and/or the corrective action financial assurance demonstrations.

6
7 c. If the multiplier was previously approved for reduction pursuant to ¶a and ¶b, CIWMB may
8 require the multiplier to be increased in increments of five (5), *limited to one (1) incremental*
9 *increase within a five (5) year period*, to a maximum multiplier of thirty (30), if at any time
10 subsequent to the approved reduction the operator fails to continue to meet the conditions
11 specified in ¶a and ¶b.

12
13 2. The operator has ~~proposed and continuously~~ consistently performed a proactive monitoring
14 program ~~for approval~~ that has been described in the operator's postclosure maintenance plan
15 ~~that has been approved~~ by the EA, CIWMB and RWQCB. ~~that is a systematic evaluation of the~~
16 ~~characteristics and trends of leachate, landfill gas, groundwater and final cover to optimize~~
17 ~~postclosure maintenance.~~ The proactive monitoring program shall ~~address~~ include, but not be
18 limited to the following: leachate quality and quantity; landfill gas generation and migration;
19 groundwater quality; and final cover settlement, stability, integrity, and maintenance history
20 including repair and replacement. *If the operator is already monitoring one or more of the items*
21 *identified in this section due to other requirements, these may be included within the proactive*
22 *monitoring program. The proactive monitoring program shall ensure that the operator is*
23 *obtaining information in order to determine the characteristics and trends of leachate, landfill*
24 *gas, groundwater and final cover both individually and as they interact with each other in the*
25 *landfill. The operator shall analyze the data to determine if postclosure maintenance activities*
26 *have been and will be effective in meeting the requirements of §§21090 and 21180. The*
27 *monitoring data and evaluation shall be made available to EA, CIWMB, and RWQCB upon*
28 *request.*

29
30 3. There ~~shall~~ has not ~~be~~ been a disbursement for corrective action in accordance with §22234,
31 and

32
33 4. The postclosure maintenance activities and costs are consistent with ~~and not greater than~~ the
34 estimated postclosure maintenance activities and costs in the approved postclosure maintenance
35 plan.

36
37 ~~(4) After fifteen (15) years of completed postclosure maintenance activities, if an operator does~~
38 ~~not qualify for a reduction in the multiplier pursuant to ¶(a)(3)(C), CIWMB shall require the~~
39 ~~multiplier to be maintained at the current multiplier.~~

40
41 (3) At each postclosure maintenance plan review conducted pursuant to §21865, if the multiplier was
42 previously approved for reduction pursuant to ¶(a)(2), CIWMB shall require the multiplier to be
43 increased in increments of five (5), *limited to one (1) incremental increase within a five (5) year*
44 *period*, to a maximum multiplier of thirty (30), if, during the five (5) year interval since the previous
45 plan review, either

46
47 (A) The operator fails to meet conditions specified in ¶(a)(2)(C)1 or 2 except:

1
2 1. if the enforcement order issued pursuant to ¶(a)(2)(C)1 was issued due to an exceptional event
3 unrelated to the design, operation, closure, or maintenance of the closed solid waste landfill,
4 including, but not limited to, a wildfire or act of terrorism, and the operator petitions CIWMB and
5 CIWMB determines that;

6
7 a. the enforcement order meets the conditions of ¶1, and

8
9 b. the operator is in compliance with the terms and conditions of that enforcement order, or

10
11 (B) The operator fails to meet the schedule to repay any disbursement for corrective action pursuant
12 to §22234(b).

13
14 (4) If an operator does not qualify for a reduction in the multiplier pursuant to ¶(a)(2)(C) and is not
15 required to increase the multiplier pursuant to ¶(a)(3), CIWMB shall require the multiplier to be
16 maintained at the current multiplier.

17
18 (b) For each solid waste landfill with approved final closure and postclosure maintenance plans
19 on or before [effective date of regulations], the postclosure maintenance cost estimate multiplier
20 must be equal to thirty (30), except that:

21
22 (1) Upon request by the operator and verification by CIWMB, the operator may reduce the
23 multiplier to an amount corresponding to the number of years of postclosure maintenance
24 completed since the approval of the certification of closure of the entire solid waste landfill
25 pursuant to §21880, but shall not reduce the multiplier to less than fifteen (15).

26
27 (2) Upon request by the operator and verification by CIWMB, at the end of each year of
28 postclosure maintenance, the operator may reduce the multiplier on a one-for-one basis with the
29 number of years of postclosure maintenance completed, but shall not reduce the multiplier to less
30 than fifteen (15).

31
32 (c) Upon transfer of ownership or operation of a closed solid waste disposal site,

33
34 (1) The new operator shall provide a financial assurance demonstration using a multiplier of
35 thirty (30), and

36
37 (2) The new operator may submit a request to CIWMB for approval to reduce the multiplier to
38 the current level of financial assurances provided by the ~~old~~previous operator. CIWMB shall
39 approve the request if CIWMB determines that all of the following criteria are met:

40
41 (A) The new operator has ~~at least ten (10) years of experience adequately and appropriately~~
42 ~~operating and maintaining~~ operated and maintained solid waste disposal sites for at least ten
43 (10) years, is not currently in violation of an enforcement order and has not exhibited a pattern
44 and practice of violations of applicable standards;

45
46 (B) The new operator has submitted the affidavit required by §21200(b)(2); and
47

(C) The new operator has submitted satisfactory evidence that it is able to obtain a financial assurance demonstration, pursuant to §22228 at a thirty (30) multiplier level.

Note: Authority Cited: Section 40502, and 43050, Public Resources Code.

Reference: Sections 43103, and 43501, 43509(a), 43600, 43601, 43602, and 43604 Public Resources Code

ARTICLE 4. FINANCIAL ASSURANCE REQUIREMENTS FOR CORRECTIVE ACTION

§ 22220. CIWMB - Scope and Applicability. ~~(new)~~

(a) This article requires operators of disposal facilities to demonstrate the availability of financial resources to conduct ~~known or reasonably foreseeable~~ corrective action activities as required under ~~Article 1, Subchapter 3, Chapter 3 (§§section 20380(b) et seq.) and §22100.~~

(b) The requirements of this article apply to operators of all disposal facilities that ~~were or~~ are required to be permitted as solid waste landfills and have been or will be operated on or after July 1, 1991.

Note: Authority cited: Sections 40502 and 40508, Public Resources Code

Reference: Sections 40508, and 43103, Public Resources Code; Section 258.73, Title 40 Code of Federal Regulations.

§ 22221. CIWMB - Amount of Required Coverage. ~~(T14:Section 17258.73)~~

(a) Except as otherwise provided ~~Noted in ¶(b) and in §§section 22225 and 22226~~, the operator of each disposal facility shall demonstrate financial responsibility to the CIWMB for initiating and completing known or reasonably foreseeable corrective action ~~for all known or reasonably foreseeable releases from the disposal facility as require under §Article 1, Subchapter 3, Chapter 3, (section 20380 et seq.) and §22100~~ in at least the amount of the ~~current~~ greater of either the most recently approved or most recently submitted corrective action cost estimate, ~~whichever is greater, prepared pursuant to §22101(a) reviewed and approved by submitted to the appropriate RWQCB~~ [Water Release Corrective Action Estimate]. Effective [one year after effective date of regulations], this ¶ does not apply to an operator that is required to comply with ¶(b).

(b) Except as otherwise provided in §§22225 and 22226, effective [one year after effective date of regulations], on or before the date of the first permit review or revision or plan review as determined by the schedule in §21865, the operator of each disposal facility shall demonstrate financial responsibility to CIWMB for initiating and completing known or reasonably foreseeable corrective action in at least the amount of the greater of:

(1) The greater of either the most recently approved or most recently submitted corrective action cost estimate, whichever is greater, prepared pursuant to §22101(a), [Water Release Corrective Action Estimate], or ~~The operator of each disposal facility required to demonstrate financial responsibility to undertake a corrective action program must have a detailed written estimate, in current dollars, of the cost of hiring a third party to perform the corrective action in accordance with the program required under §Article 1, Subchapter 3, Chapter 3 (section 20380 et seq.) and~~

~~§22100 et seq. The corrective action cost estimate must account for the total costs of corrective action activities as described in the corrective action plan for the entire corrective action period.~~

(2) The greater of the most recently approved or most recently submitted corrective action cost estimate, whichever is greater, prepared pursuant to either §22101(b) or (c), [Non-Water Release Corrective Action Estimate].

(c) Except as otherwise provided in §§22225 and 22226, in determining the required amount of financial assurances under ¶¶(a) and (b), if a disposal facility is subject to both known and reasonably foreseeable corrective actions, the operator must compare the amounts of the applicable known and reasonably foreseeable corrective action cost estimates and use the estimate with the greatest amount.

~~(ed)~~ The operator must annually adjust the estimate for inflation until the corrective action program is completed in accordance with ~~§Article 1, Subchapter 3, Chapter 3 (section 20380 et seq.)~~ and §22100 et seq.

~~(3) The operator must increase the corrective action cost estimate and the amount of financial assurance provided under ¶(a) if changes in the corrective action program or disposal facility conditions increase the maximum costs of corrective action.~~

~~(4) The operator may reduce the amount of the corrective action cost estimate and the amount of financial assurance provided under ¶(a) if the cost estimate exceeds the maximum remaining costs of corrective action.~~

~~(de)~~ The operator must receive authorization from ~~the~~ CIWMB ~~approving the reduction of the corrective action cost estimate~~ before ~~adjusting~~ reducing the financial mechanism used to demonstrate coverage.

Note: Authority cited : Sections 40502 and 40508, Public Resources Code

Reference: Sections 40508 and 43103, Public Resources Code; Section 258.73, Title 40, Code of Federal Regulations.

SUBCHAPTER 3. ALLOWABLE MECHANISMS

ARTICLE 1. CIWMB - GENERAL REQUIREMENTS FOR MECHANISMS

§ 22231. CIWMB - Cancellation or Nonrenewal by a Provider of Financial Assurance. **(T14:s17258.74,s18242,18294)**

(a) Except as otherwise provided in §22232, a provider of financial assurance may cancel or not renew a financial assurance mechanism by sending a notice of termination by certified mail to the operator, and the CIWMB.

(1) Termination of a letter of credit, a surety bond, an insurance policy, or a guarantee shall not occur until 120 days after the date on which the operator, and the CIWMB have received the notice of termination, as evidenced by the return receipts.

(2) If a provider of financial assurance cancels or fails to renew a mechanism for reasons other than its bankruptcy or incapacity, the operator shall obtain alternate coverage within 60 days after receiving the notice of termination. If the operator fails to obtain alternate coverage within the 60 days, the operator shall notify the CIWMB of such failure.

(b) The closure and/or postclosure maintenance and/or reasonably foreseeable corrective action costs insurance policy, issued in accordance with §22248, shall provide that the insurer may not cancel, terminate or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy shall, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the operator, and the CIWMB 120 days in advance of cancellation. If the insurer cancels the policy, the operator must obtain alternate financial assurance as specified in §22228. If the operator fails to demonstrate alternate financial assurance as specified in §22228 within 60 days after receiving the notice of termination, the CIWMB may allow the insurer an extension to the term of the insurance policy for a period of time shorter than one year. Cancellation, termination, or failure to renew will not occur and the policy will remain in full force and effect in the event that on or before the date of expiration:

(1) The CIWMB or ~~enforcement agency~~EA deems the disposal facility abandoned; or

(2) The permit is terminated or revoked or a new permit is denied by the CIWMB or ~~enforcement agency~~EA; or

(3) Partial or complete Closure, postclosure maintenance, or corrective action is ordered by ~~the~~ CIWMB, EA, RWQCB, other government entity, ~~or any other state or federal agency~~, or a court of competent jurisdiction; or

(4) The operator is named as a debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy) U.S. Code; or

(5) All delinquent premium payments have been brought current.

(c) Cancellation or nonrenewal of third party operating liability insurance or self-insurance and risk management for third party operating liability coverage shall occur no less than 60 days after the date on which the operator, and the CIWMB have received the notice of termination, as evidenced by the return receipts; except in the case of non-payment of insurance premiums, in which case cancellation shall occur no less than 10 days after the date on which the operator, and the CIWMB have received the notice of termination.

Note: Authority cited: Sections 40502 and 43040, Public Resources Code.
Reference: Sections 43040, 43103 and 43500-43610, Public Resources Code.

§ 22234. CIWMB -Disbursements from Financial Mechanisms

(a) The operator, or other person authorized to conduct closure, postclosure maintenance, or corrective action activities may request disbursements from the CIWMB for these expenditures

1 in advance of the activities or as reimbursement for activities completed. Requests for
2 disbursement will be granted by the CIWMB only if:

3
4 (1) Sufficient funds are remaining in the financial mechanism(s) to cover the remaining costs of
5 closure, postclosure maintenance, or corrective action; and

6
7 (2) Justification and documentation of the cost is presented to the CIWMB for review and
8 approval in conjunction with approved final closure and postclosure maintenance plans; or an
9 approved corrective action plan.

10
11 (3) For a corrective action financial mechanism, the owner and operator have provided
12 documentation satisfactory to CIWMB that they are financially unable to conduct the corrective
13 action activities without receiving a disbursement or disbursements from the financial
14 mechanism.

15
16 (b) The operator shall replenish the corrective action financial mechanism(s) shall be
17 replenished to the level prescribed by §22221 within five (5) years of the initial disbursement
18 unless CIWMB and RWQCB agree to an alternate schedule.

19
20 ~~(b)~~ The CIWMB shall authorize disbursements from an established closure or postclosure
21 maintenance financial assurance mechanism to the RWQCB for the costs of closure or
22 postclosure maintenance if the RWQCB finds that the operator has failed to perform closure or
23 postclosure maintenance as required by the closure plan or postclosure maintenance plan as
24 approved by the RWQCB and the CIWMB, or as required by an Order issued by the RWQCB,
25 including Waste Discharge Requirements (WDRs), Cease and Desist Orders (CDOs), and/or
26 Cleanup and Abatement Orders (CAOs).

27
28 ~~(e)~~ The CIWMB shall authorize disbursements from an established corrective action financial
29 assurance mechanism to the RWQCB for the costs of corrective action if the RWQCB finds that
30 the operator has failed to perform corrective action as required by the corrective action workplan
31 as approved by the RWQCB and the CIWMB; or as required by an Order issued by the
32 RWQCB, including WDRs, CDOs, and/or CAOs.

33
34 Note: Authority cited: Section 40502, Public Resources Code.

35 Reference: Sections 43103 and 43500 – 43610. Public Resources Code, Title 40, Code of Federal Regulations, Section 258.74(a)(7).

36 37 38 39 **ARTICLE 2. CIWMB - FINANCIAL ASSURANCE MECHANISMS**

40 41 **§ 22245. CIWMB - Pledge of Revenue. ~~(T14:s18290)~~**

42
43 (a) A pledge of revenue shall consist of a resolution by the governing body of the operator or
44 provider of financial assurance authorizing an agreement between the operator or provider of
45 financial assurance and the CIWMB to establish the pledge. The resolution and the agreement
46 shall remain effective continuously throughout the period in which the pledge of revenue is used
47 to satisfy the requirements of Subchapter 2 of this Chapter.

(b) The agreement establishing the pledge of revenue shall contain the following items:

(1) The types and sources of pledged revenue;

(2) The amount of revenue pledged from each source;

(3) The period of time that each source of revenue is pledged to be available; and

(4) The solid waste landfill(s) and the current postclosure and/or corrective action cost estimate(s) that are covered by the pledge.

(5) The authorization for the CIWMB to direct payment for postclosure maintenance and/or corrective action if the CIWMB determines that the operator has failed or is failing to perform postclosure maintenance or corrective action activities covered by the mechanism.

(c) An operator or provider of financial assurance shall pledge the following types of revenue that the operator or provider of financial assurance controls and that will be available in a timely manner to pay for postclosure maintenance or corrective action:

(1) User fees, rents, or other guaranteed revenue from existing or planned solid waste facilities;

(2) Tax increases within statutory limitations; and/or

(3) Other guaranteed revenues that are acceptable to the CIWMB.

(d) If an operator or provider of financial assurance ceases at any time to retain control of its ability to allocate any pledged revenue to pay postclosure maintenance or corrective action costs, the operator or provider of financial assurance shall notify the CIWMB and shall obtain alternate coverage within 60 days after control lapses.

(e) Each resolution and agreement shall be submitted with a completed pledge of revenue form CIWMB 114 (02/2009).

Note: Authority cited: Section 40502, Public Resources Code.
Reference: Sections 43103 and 43500-43610, Public Resources Code.

§ 22248. CIWMB -Closure and/or Postclosure Maintenance and/or Reasonably Foreseeable Corrective Action Insurance.

(a) The issuer of the insurance policy shall be an insurer, including a captive insurance company that, at a minimum, is licensed by the California Department of Insurance to transact the business of insurance in the State of California as an admitted carrier.

(b) If coverage is not available as specified in ¶(a), the operator may seek coverage from an insurer, including a captive insurance company that, at a minimum, shall be eligible to provide insurance as an excess or surplus lines insurer in California.

(c) If coverage is obtained as described in ¶(b), the insurance shall be transacted by and through a surplus lines broker currently licensed under the regulations of the California Department of Insurance [California Insurance Code (CIC), Division 1, Part 2, Chapter 6] and upon the terms and conditions prescribed by the California Department of Insurance.

(d) The CIWMB or its designee may object to the use of any insurer at anytime, whether before or after placement of coverage based on information obtained from, but not limited to, the Surplus Line Association of California, Best's Insurance Reports, and/or the Non- Admitted Insurers Quarterly List.

(e) The closure or postclosure maintenance insurance or reasonably foreseeable corrective action policy shall guarantee that funds will be available to close the solid waste landfill whenever closure occurs or to provide postclosure maintenance for the solid waste landfill whenever the postclosure maintenance period begins or provide for corrective action for the solid waste landfill if corrective action is deemed necessary, whichever is applicable. The policy shall also guarantee that once the closure or postclosure maintenance or corrective action program begins, the insurer will be responsible for the paying out of funds to the operator or person authorized to conduct closure or postclosure maintenance or corrective action, up to an amount equal to the face amount of the policy.

(f) The insurance policy shall be issued for a face amount at least equal to the most recently approved closure and/or postclosure maintenance and/or reasonably foreseeable corrective action cost estimate(s) whichever is applicable, unless the policy is being used in combination with another acceptable mechanism. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability may be lowered by the amount of the payments.

(g) An operator, or any other person authorized to conduct closure or postclosure maintenance or corrective action, may receive ~~disbursements~~ ~~reimbursements~~ for closure or postclosure maintenance or corrective action expenditures, whichever is applicable. Requests for ~~disbursements~~ ~~reimbursements~~ will be granted by the insurer only if ~~the remaining value of the policy is sufficient to cover the remaining costs of closure or postclosure maintenance or corrective action and if~~ the expenditures have been reviewed and approved in writing by the CIWMB or its designee.

(h) Notwithstanding any other provisions of this section, if either partial or complete closure, postclosure maintenance or corrective action activities are ordered by the CIWMB, EA, RWQCB, or other government entity or court of competent jurisdiction ~~its designee~~ as a result of failure by the operator or other authorized person ~~authorized~~ to conduct such activities, the policy shall also guarantee that the insurer shall be responsible for paying out funds to the CIWMB for deposit into a special account established by the CIWMB for closure, postclosure maintenance or corrective action activities of the facility. The policy shall further guarantee that the insurer shall, without delay, pay to the CIWMB the amount the CIWMB requests, up to an amount equal to the face amount of the policy, regardless of any remaining premiums to be paid. CIWMB requests for payment will be based on current estimated expenses as determined by the

1 CIWMB for closure, postclosure maintenance or corrective action activities. Any payments
2 made by the insurer that exceed the actual expenses incurred in performing the insured activity
3 will be repaid to the insurer at the completion of the insured activity.
4

5 (i) Each policy shall contain a provision allowing assignment of the policy to a successor
6 operator. Such assignment may be conditional upon consent of the insurer, provided that such
7 consent is not unreasonably refused.
8

9 (j) Except as provided in §22231, the insurer may not cancel, terminate, or fail to renew the
10 policy. ~~The insurance policy must provide that the insurer may not cancel, terminate or fail to~~
11 ~~renew the policy except for failure to pay the premium. The automatic renewal of the policy~~
12 ~~must, at a minimum, provide the insured with the option of renewal at the face amount of the~~
13 ~~expiring policy. If there is a failure to pay the premium, the insurer may cancel the policy by~~
14 ~~sending notice of cancellation by certified mail to the owner and operator, and the CIWMB 120~~
15 ~~days in advance of cancellation. If the insurer cancels the policy, the owner or operator must~~
16 ~~obtain alternate financial assurance as specified in §22228.~~
17

18 (k) For insurance policies providing coverage for postclosure maintenance, commencing on the
19 date that liability to make payments pursuant to the policy accrues, the insurer shall thereafter
20 annually increase the face amount of the policy. Such increases must be equivalent to the face
21 amount of the policy, less any payments made, multiplied by an amount equivalent to 85 percent
22 of the most recent investment rate or of the equivalent coupon-issue yield announced by the U.S.
23 Treasury for 26-week Treasury securities.
24

25 (l) The operator may cancel the insurance policy only if alternate financial assurance is
26 substituted as specified in §22227, or if the operator is no longer required to demonstrate
27 financial responsibility in accordance with the requirements of Subchapter 2 of this Chapter.
28

29 (m) Each closure and/or postclosure maintenance and/or reasonably foreseeable corrective action
30 insurance policy shall be evidenced by a certificate of insurance established by using form
31 CIWMB 106 (02/200908/2001), ~~which is incorporated by reference~~. Each certificate of
32 insurance shall contain the insurer's warranty that the policy conforms in all respects with the
33 requirements of this Subdivision, as applicable, and as such regulations were constituted on the
34 date the policy is certified to on an annual basis. In addition, the insurer shall agree that any
35 provision of the policy inconsistent with these regulations is amended to eliminate such
36 inconsistency by submittal of the certification for closure and/or postclosure maintenance and/or
37 reasonably foreseeable corrective action insurance.
38

39 Note: Authority cited: Section 40502, Public Resources Code.
40 Reference: Sections 43103 and 43500-43610, Public Resources Code.

- 1 No additional changes made to Forms 100, 106, or 114, which were included with the text made
- 2 available for the initial 45-day comment period that ran from February 27 through April 13,
- 3 2009, and the subsequent 45-day comment period that ran from August 20 through October 5,
- 4 2009.
- 5 To conserve paper the forms are not reprinted here.